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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Zion AZAR et al

Serial No.: 10/802,390

Filed: March 17, 2004

For: ABRASIVE PAD

Examiner: Hasan S. Ahmed

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Group Art Unit: 1615

Attorney Docket: 35682

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMMUNICATION

Sir:

In reviewing the above application in the USPTO PAIR page, Image File Wrapper, Applicant noticed that one of the three documents with the Mail Room date of 04-08-2008, is labeled, "Request for USPTO to retrieve priority docs." Applicant believes this name is not an accurate description of the five corresponding sheets scanned on this date. Applicant requests that this document be re-named to read "Pre-appeal Brief Request for Review" to be more easily identifiable for viewers.

Attached for your convenience is a print-screen of the Image File Wrapper together with the five corresponding sheets.

Respectfully submitted,

Martin D. Moynihan
Registration No. 40,338

Date: April 30, 2008



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http://portal.uspto.gov/external/portal/tut/p/txml/04_S9SPykssy0xPLMhVzOWMOY_QjzKLN4gPMATJgFieAfqRqCLGpuginAE

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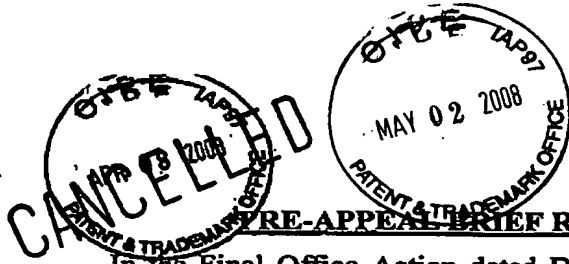
Mail Room Date	Document Description	Page Count	Select All	Start Download	Clear All
04-08-2008	Request for USPTO to retrieve priority docs	5	<input type="checkbox"/>	<input type="checkbox"/>	
04-08-2008	Extension of Time	1	<input type="checkbox"/>	<input type="checkbox"/>	
04-08-2008	Notice of Appeal Filed	1	<input type="checkbox"/>	<input type="checkbox"/>	
12-27-2007	Final Rejection	7	<input type="checkbox"/>	<input type="checkbox"/>	
12-27-2007	List of references cited by examiner	1	<input type="checkbox"/>	<input type="checkbox"/>	
12-27-2007	NPL Documents	1	<input type="checkbox"/>	<input type="checkbox"/>	
12-27-2007	Index of Claims	1	<input type="checkbox"/>	<input type="checkbox"/>	
10-04-2007	Amendment - After Non-Final Rejection	1	<input type="checkbox"/>	<input type="checkbox"/>	
10-04-2007	Applicant Arguments/Remarks Made in an Amendment	2	<input type="checkbox"/>	<input type="checkbox"/>	
10-04-2007	Fee Worksheet (PTO-06)	1	<input type="checkbox"/>	<input type="checkbox"/>	
07-11-2007	Non-Final Rejection	5	<input type="checkbox"/>	<input type="checkbox"/>	
07-11-2007	Index of Claims	1	<input type="checkbox"/>	<input type="checkbox"/>	
05-02-2007	Fee Worksheet (PTO-06)	1	<input type="checkbox"/>	<input type="checkbox"/>	
05-02-2007	Claims Worksheet (PTO-2022)	1	<input type="checkbox"/>	<input type="checkbox"/>	
04-16-2007	Amendment - After Non-Final Rejection	1	<input type="checkbox"/>	<input type="checkbox"/>	
04-16-2007	Claims	2	<input type="checkbox"/>	<input type="checkbox"/>	
04-16-2007	Applicant Arguments/Remarks Made in an Amendment	4	<input type="checkbox"/>	<input type="checkbox"/>	
04-16-2007	Extension of Time	1	<input type="checkbox"/>	<input type="checkbox"/>	
	Examiner Interview Summary Record (DTR)				

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RE-APPEAL BRIEF REQUEST FOR REVIEW

In the Final Office Action dated December 27, 2007 claims 1-13 were finally rejected.

The Examiner rejected claims 1-13 under 35 U.S.C. §102(b) as being anticipated by Page (US Patent No. 6,214,632). Claims 1 and 7 are the only independent claims in the application.

It is submitted that the Examiner has not provided a *prima facie* case in support of the rejections of the claims since Page fails to teach at least two features of the claims:

1. Page fails to teach an abrasive pad having an abrasive surface as recited in claims 1 and 7.
2. Page fails to teach a separate ring, as recited in claims 3 and 7.

1. Page fails to teach an abrasive pad having an abrasive surface as recited in claims 1 and 7

In an Office Action dated July 11, 2007, the Examiner stated that Page teaches the abrasive surface of claim 1 at col. 8, lines 47-67; col. 9, line 50 to col. 10, line 6 and Fig. 3C. In the response filed on October 4, 2007, Applicants disagreed with the Examiner and argued that Page not only does not teach an abrasive surface, it actually teaches away from using such surface.

Turning first to the section at col. 8, lines 47-67, there is no mention of any possible abrasive properties of the outer layer, which applicants assume the Examiner has identified as the abrasive layer. In fact the entire section preceding the quoted section mentions that the outer layer is soft no less than five times and also that the layer is conforming. Neither of these characteristics is consistent with an "abrasive" surface. The fact that it removes "low tension substances from the skin" does not make the surface abrasive, since these substances are removed because the materials have a low surface tension (col. 8, lines 56-67). The patent describes the pad as removing these substances "without removing makeup" (col. 8, line 2) and for "applying new makeup" col. 8, line 3. Neither of these function could conceivable be performed with an abrasive pad.

Furthermore, the section cited by the Examiner gives the hardness measured using Shore A 90 which is the measurement scale used for soft elastomers and medium rubbers as well as for felt.

Turning to the section at col. 9, line 50 to col. 10, line 6, this section continuously refers to the "porous membrane" as being soft and conformable (see for example col. 10, lines 51). In fact, the invention is contrasted with the prior art which is said to be "relatively hard, non-conformable, stiff and inflexible and abrasive." (col. 10, lines 63-64). This is emphasized again at the later portion of the cited section at col. 11, lines 1-3, referring to prior art pads.

In response to Applicants' arguments, the Examiner repeated his rejection in a Final Office Action dated December 27, 2007 and attached a definition of the term "abrasive" from Merriam-Webster Online Dictionary. According to the Examiner, the term is defined as "a substance used for abrading, smoothing or polishing". However, Applicants have reviewed the definition attached to the office action which defines the term abrasive as "a substance (as emery or pumice) used for abrading, smoothing, or polishing" (emphasis added). Clearly, the Examiner ignored the important part of the definition provided by him according to which abrasive is a substance like emery or pumice, which is very far from being a "soft" surface, as described in Page.

Moreover, the definition provided by the Examiner is of a noun, however, the claims in the application recite an abrasive surface, where the term abrasive is used as an adjective. Applicants attached a copy of the definition of the term abrasive used as an adjective from the Merriam Webster Dictionary, which defines the adjective as follows: "1: tending to abrade 2: causing irritation". The verb abrade is further defined as "1 a: to rub or wear away esp. by friction: ERODE b: to irritate or roughen by rubbing 2: to wear down in spirit..."

Thus, the term abrasive is known in the art and in the English language in general as rubbing away. Clearly, the "soft" surface of Page does not meet this definition. Thus, the prior art fails to teach an abrasive surface as required by independent claims 1 and 7.

2. Page fails to teach a separate ring, as recited in claims 3 and 7

According to the Examiner, Fig. 8B of Page shows a ring formed by a membrane 104 which surrounds the backing material "...such that there exists no potentially abrasive edge", see Page col. 13, lines 3-4.

Applicants respectfully disagree with the Examiner. First and foremost, the claim requires a *separate* ring. Even assuming that the turned up edge of the laminate 104 of Fig. 8B could be considered "a ring," which it is not, it is certainly not a separate ring.

Page's Fig. 8B shows a membrane which may have an abrasive *edge* caused by the laminations thereof. Page solves the problem of avoiding the abrasive edge (i.e., the laminated edge between the front soft layer and the backing) harming the skin, by exposing the skin to the same surface (soft layer) as the face. Clearly this surface is not abrasive otherwise the edge of the pad would still be abrasive. What Page is trying to avoid is not the edge of the soft surface which forms both the front face and the exposed face of the turned up portion, but the edge of the layer behind that surface touching the skin. Page does not need a separate non-abrasive edge since a non-abrasive surface is already at hand, namely the outer surface of the laminate which contacts the skin.

This is in contrast with what is claimed in claims 1 and 7 of the application, which recite "a separate ring of elastomer or sponge material surrounding the backing material to reduce contact between the edge of the abrasive surface and a surface being abraded." (emphasis added). Thus, the contact between the edge of the abrasive surface and a surface being abraded is reduced by way of a separate ring. No such ring is present in Page and none is needed.

Clearly, the Examiner erred in his rejection and in not accepting Applicants' arguments filed on October 4, 2007.

Applicants believe that the Final Rejection of December 27, 2007 is not proper and without basis, specifically that the rejections arise from the Examiner not appreciating the essence of the cited art and ignoring the dictionary definitions brought up by the Examiner himself. Applicants believe that independent claims 1 and 7 are neither anticipated by nor rendered obvious over the cited art.

Since independent claims 1 and 7 are patentable over the cited art, claims 1 and 7 and claims 2-6 and 8-13, respectively dependent therefrom, are in condition for allowance.

Applicants respectfully request that the Panel issue a Notice of Allowance in this case.

Respectfully Submitted,



Martin D. Moynihan
Registration No. 40,338

Date: April 7, 2008



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